

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTHA KITCHEN)	
Claimant)	
VS.)	
)	Docket No. 228,213
LUCE PRESS CLIPPINGS, INC.)	
Respondent)	
AND)	
)	
AMERICAN HOME ASSURANCE CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the preliminary hearing Order dated June 8, 1998, entered by Assistant Director Brad E. Avery.

ISSUES

The Assistant Director denied respondent's motion to terminate preliminary hearing benefits. The only issue on this appeal is whether claimant's right upper extremity condition is the result of an accidental injury that arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record compiled to date, the Appeals Board finds:

- (1) By Order dated January 6, 1998, Administrative Law Judge Floyd V. Palmer found that claimant more probably than not sustained a work-related repetitive use injury to her right upper extremity and granted her request for temporary total disability and medical benefits. Respondent appealed that Order to the Appeals Board who affirmed Judge Palmer's preliminary hearing Order on March 17, 1998.
- (2) The case returns to the Appeals Board upon respondent's motion to terminate the benefits previously ordered. Assistant Director Brad E. Avery denied the respondent's motion after finding that claimant sustained personal injury by accident that arose out of

and in the course of her employment with respondent. The respondent then initiated this appeal.

(3) The Appeals Board agrees with both Judge Palmer and Assistant Director Avery that claimant has sustained personal injury by accident arising out of and in the course of her employment with respondent.

(4) Based upon Dr. Lynn D. Ketchum's May 15, 1998 medical report, there is appropriate medical treatment that may help claimant.

(5) The respondent and its insurance carrier have appointed Dr. Deborah T. Mowery as the authorized treating physician. But Dr. Mowery does not believe claimant has sustained a work-related injury and, therefore, she is neither providing nor offering claimant treatment. The respondent and its insurance carrier have failed and refused to authorize claimant to consult with a physician who is willing to undertake claimant's treatment.

Conclusions of Law

The Assistant Director's Order should be affirmed.

(1) Because claimant has sustained a work-related accident and, according to the Assistant Director, presently needs medical treatment as a result of that accident, she is entitled to receive the appropriate temporary total disability and medical benefits pending a full hearing on the claim.¹

(2) In her brief to the Appeals Board, claimant requests the Board to remand this proceeding to the Assistant Director with directions to order the appointment of Dr. Ketchum as the authorized treating physician. Although the facts might justify such an order, the record reveals that this is the first time that claimant has requested such an appointment. Should claimant seek such order, she should follow the appropriate procedure and request Dr. Ketchum's appointment from either the Assistant Director or the Administrative Law Judge to whom the case is assigned.

Further, the question whether a certain doctor should be authorized for treatment is not a preliminary hearing issue that the Appeals Board may review.²

¹K.S.A. 1996 Supp. 44-534a

²K.S.A. 1997 Supp. 44-534a and K.S.A. 1997 Supp. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated June 8, 1998, entered by Assistant Director Brad E. Avery should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Matthew S. Crowley, Topeka, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director